

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2016

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant requested a list of all current team email addresses and the associated team title and physical location of the team to which each email address belongs.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) is entitled to refuse to comply with the request under section 12 of the FOIA. She also finds that DWP failed to provide sufficient advice and assistance as required by section 16 of the FOIA. However she does not require any remedial steps to be taken.

Request and response

3. On 10 November 2015, the complainant wrote to DWP and requested information in the following terms:

"Please provide a list of all current team email-addresses at the DWP, and the respective jobtitles/teams (i.e. the name/description of the teams, not the names of the persons in those teams) that can be contacted in this way, as well as the physical location of these teams. By team email-address we mean any email-address that does not contain a personal name, like e.g. hr(at)dwp.gsi.gov.uk, correspondence(at)dwp.gsi.gov.uk, freedom-of-information-request(at)dwp.gsi.gov.uk, etc., etc."

4. DWP responded on 8 December 2015. It stated that the information requested was not readily available from centrally held records and estimated that retrieval of the information would exceed the appropriate limit. It did not explain why the appropriate limit would be exceeded and did not explain whether the scope of the request could be refined to within the appropriate limit.
5. The complainant requested an internal review on 17 December 2015. He requested advice on how to refine his request and also offered to provide 'advice and suggestions for formulas' to aid retrieval of the requested information.
6. DWP provided its internal review on 18 January 2016. It upheld its application of section 12 and provided an explanation to the complainant that retrieval of the requested information would involve examining approximately 90,000 records. DWP further explained that it considered the request could not be refined to fall within the appropriate limit.
7. The complainant wrote to DWP again on 2 February 2016. He explained that he was happy to limit his request to 'teams who geographically have central responsibilities' and whose responsibilities fully or partially cover Job Seeker's Allowance (JSA), Employment and Support Allowance (ESA), Policy and Human Resources. The complainant also asked DWP to provide an estimate of how many team email addresses could be provided within the appropriate limit.
8. DWP responded with a further review of its handling of the complainant's request on 7 March 2016. It reiterated that section 12 would apply to the request and stated that even if the complainant refined his request to cover fewer team email addresses this would not substantially reduce the time for complying with the request.

Scope of the case

9. The complainant contacted the Commissioner on 8 April 2016 to complain about the handling of his request for information.
10. In his complaint to the Commissioner, and subsequent correspondence, the complainant also expressed dissatisfaction at the advice and assistance provided by DWP.
11. The Commissioner considers the scope of the investigation to be whether DWP is entitled to refuse to comply with the request under section 12 of the FOIA. The Commissioner will also consider whether

DWP has provided reasonable advice and assistance to the complainant about his request.

12. During the course of the investigation, the complainant advised the Commissioner that, in the event that section 12 applied, he hoped to receive an estimate of how many email addresses could be retrieved within the appropriate limit.
13. However the Commissioner notes that public authorities are not obliged to work up to the appropriate limit when responding to requests for information. Therefore the Commissioner can only decide whether or not a public authority is obliged to comply with the request in its entirety.
14. The complainant also argued that it is in the public interest to be able to contact the relevant team within an organisation the size of DWP. The Commissioner acknowledges this as a matter of customer service, but is mindful that section 12(1) of the FOIA is not subject to the public interest test. The Commissioner has not, therefore, considered the public interest in complying with the request, but notes in any event that DWP's public-facing team email addresses are published online.¹

Reasons for decision

15. Section 1(1) of the FOIA states:

"Any person making a request for information to a public authority is entitled-

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

16. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

¹ <https://www.gov.uk/contact-jobcentre-plus>

17. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) set the appropriate limit (also known as the cost limit) at £600 for central government departments. In cases where the cost of complying with the request is based on the time taken to comply with the request, the public authority must apply a flat rate of £25 per hour. This amounts to 24 hours' work in accordance with the appropriate limit set out above.
18. When a public authority is estimating whether complying with a request may cost more than the appropriate limit, it may only include the time taken in:
 - a. Determining whether it holds the information;
 - b. Locating the information, or a document which may contain the information;
 - c. Retrieving the information, or a document which may contain the information; and
 - d. Extracting the information from a document containing it.
19. Section 16(1) of the FOIA states:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."
20. The Commissioner asked DWP to provide a detailed estimate of the time required to comply with the activities set out above.

DWP's position

21. DWP explained to the Commissioner that its IT services are contracted to a third party supplier. The third party supplier owns the infrastructure and software that contains the requested email addresses.
22. DWP provided the following breakdown of the costs to retrieve the requested information:
 - DWP IT department to raise and approve a request to commission the third party supplier to interrogate, extract data and provide a report: One hour at £25 per hour.
 - Third party supplier standard charge to provide a quotation for work to retrieve addresses: £160

- Third party supplier to interrogate database and supply team email address data: Informal quotation of £300 for 0.5 days' work.
 - Services of a data analyst to remove information not in the scope of the request and establish individual job titles/team role as well as physical location: minimum 112 days (7.5 hours per day) at £25 per hour: £21,000
 - Total cost: £21,485
23. DWP explained to the Commissioner that it considered the costs involved in raising the request and obtaining a quotation fell within criteria a. and b. of the allowable activities in the Regulations.
24. DWP also explained that it considered the informal quotation of £300 for 0.5 days' work was reasonable to include in the costs estimate as the IT infrastructure and software are owned by the third party supplier and as per the contracted terms, DWP staff do not have access to the database to conduct this work.
25. The Commissioner requested a detailed breakdown of DWP's estimate of 112 days to establish the job title/team role and location of each team email address.
26. DWP set out that its current estimate of team email addresses stood at 28,000. It explained that whilst the metadata underpinning each email address may describe the location and identity of the users, this was not true for all email addresses and, where applicable, would need to be extracted manually.
27. DWP explained that the 112 day estimate allowed three seconds per email account to extract the relevant email name, identify the job titles of the people on the team, identify the location of the team and compile this into a list.
28. The Commissioner asked DWP for confirmation of how the estimate of 28,000 team email addresses had been ascertained, particularly as DWP stated at internal review that it held 90,000 personal email addresses for staff members.
29. DWP explained that the team email addresses are provided by the third party supplier and DWP is charged on a monthly basis for their use. The figure of 28,000 was obtained from DWP's finance department on the basis of its billing information. It would include very small teams, and some individuals would be members of more than one team for email purposes.

30. The Commissioner also asked DWP to explain what advice and assistance had been provided to the complainant regarding his request.
31. DWP explained that it considered that the request could not be refined in a way which would reduce the costs of compliance. It explained that the work described above would need to be undertaken and a refined request would incur additional time required to identify and remove the email addresses no longer falling within the scope of any refined request.
32. DWP also explained that if the complainant refined his request by removing the job titles and physical location, the request would still incur costs of £485 to retrieve the email addresses and a data analyst would still be required to review the email addresses to extract those falling outside the scope of the request.
33. DWP also confirmed that it had taken into account the complainant's offer to refine his request in his request for internal review. DWP explained that the team email addresses would still need to be retrieved and then interrogated to identify and extract team email addresses in JSA and ESA areas. DWP explained that these email addresses would then need to be contacted to confirm whether they 'geographically have central responsibility' as described by the complainant in his request.

The Commissioner's conclusions

34. The Commissioner is satisfied that DWP has demonstrated how complying with this request would exceed the appropriate limit and, therefore, section 12(1) of the FOIA is engaged. The Commissioner does not, however, consider DWP's estimate to represent a reasonable estimate of the costs required to undertake the work required nor does she consider that all the charges can be included in the estimate.
35. The Commissioner has issued guidance regarding estimating whether complying with a request would fall outside the appropriate limit. DWP was advised to refer to the guidance on both occasions when asked to provide its submissions.
36. The Commissioner's guidance² sets out that a public authority does not need to make a precise calculation of the costs of complying with a

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

request, instead only an estimate is required. However, it must be a reasonable estimate.

37. What amounts to a reasonable estimate can only be considered on a case by case basis. However, the Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/0004, 30 October 2007) said that a reasonable estimate is one that is *"...sensible, realistic and supported by cogent evidence"*.
38. The Commissioner had to revert to DWP for an explanation of its assertion that it would take a minimum of 112 days to review the email addresses and locate the associated information for each email address.
39. The Commissioner also notes that the calculation provided to the Commissioner for the time taken to review the email addresses was incorrect.
40. DWP explained that its estimate included 3 seconds per email address. As DWP confirmed its estimate of 28,000 email addresses, this gives an overall estimate of 23.3 hours.
41. The Commissioner has issued guidance on estimating costs when the work undertaken involves a third party. Paragraph 13 of this guidance states:

"A public authority should note that even if it uses contract or external staff to carry out some or all of the permitted activities, it can only include their time at the rate of £25 per hour irrespective of the actual cost charged or incurred."
42. The Commissioner, therefore, does not consider that the informal quote of £300 for 0.5 days' work by the contractor can be included in the cost estimate for this request. She will take the estimate of 0.5 days, or 3.75 hours, for the contractor's work as per her published guidance.
43. The Commissioner's guidance also discusses the matter of costs other than staff time. Paragraph 18 states:

"Sometimes, a public authority may expect to incur costs other than those relating to staff time when carrying out the permitted activities. The key to deciding whether or not these costs can be included in the estimate is whether it would be reasonable to include these charges."
44. The Commissioner considers that, in the circumstances of this case, it is not reasonable to include a standard third party charge of £160 to provide a quote for work involved in retrieving a list of all DWP email

addresses. The Commissioner considers that this is not an activity which falls within the four categories which can be taken into account in a reasonable estimate, as outlined at paragraph 19 above. In some circumstances the Commissioner may accept that it is reasonable for a public authority to take into account a charge made by a third party under a contractual term. However, she would only accept this as reasonable if the activity forms part of the location, retrieval or extraction of information which is necessary for the purposes of complying with a request. In this case the Commissioner finds that the charge for merely providing a quote prior to the potential retrieval of information is too far removed from the activities set out at paragraph 18 above.

45. The Commissioner also finds that the estimate of an hour to raise a request for the compilation of addresses by the third party supplier does not fall under the permitted activities allowed by the Regulations.
46. Excluding these activities for the reasons set out above, the Commissioner considers that the estimate of the time to comply, based on the submissions provided by DWP, is as follows:
 - Third party data supplier to retrieve email addresses: 3.75 hours
 - Data analyst to review retrieved email addresses and compile list with associated job role and location of team: 23.33 hours
 - Total: 27 hours
47. The Commissioner is also mindful that DWP has indicated it regards its estimate of three seconds for collating information associated with each team email address to be a conservative one. In the Commissioner's view three seconds is wholly unrealistic, and even if this activity took only five seconds per email address, the estimate of 23.33 hours would rise to 38.88 hours. The Commissioner considers this more likely to be an accurate estimate.
48. The Commissioner is of the view that, where section 12 is engaged, the public authority ought to provide advice and assistance to the applicant so that he or she may make a request that does not exceed the appropriate limit. Consequently the Commissioner has considered whether DWP provided advice and assistance, insofar as it was reasonable in the circumstances of this case.
49. The Commissioner notes that in DWP's original response dated 8 December 2015, DWP did not provide any advice or assistance and did

not provide the complainant with any reasoning as to why section 12(1) was applied.

50. At internal review, DWP advised that a refined request would be unlikely to reduce the cost of compliance. The complainant nevertheless submitted a refined request, and DWP again stated that complying with the refined request would exceed the appropriate limit. The Commissioner notes that the figure of 90,000 was for all email addresses held and that DWP provided a more representative figure of 28,000 for team email addresses in its submission to her. However, as set out above the Commissioner accepts that the work required to examine 28,000 email addresses would result in the appropriate limit being exceeded.
51. The Commissioner notes that the complainant offered to refine his request to teams who had specific responsibilities. However she accepts DWP's explanation that refining the scope of the request in this way would not reduce the amount of work required to compile the required information and may, in fact, increase the work required in order to ascertain whether the individual teams fell within the scope of any refined request.
52. The Commissioner also notes that the complainant offered to provide DWP with *"advice or suggestions for formulas"* to aid efficient retrieval of the requested information. The Commissioner would encourage applicants to engage with public authorities, especially in cases where section 12 is engaged. However a public authority is under no obligation to accept advice or practical help from an applicant with regards to the workings of its own internal systems.
53. The Commissioner is of the view that DWP did not adequately discharge its duty under section 16 since it failed to provide practical advice to the complainant. She considers that it would have been reasonable for DWP to provide a brief explanation or breakdown of the cost estimate, which might assist the applicant in assessing whether the request could successfully be refined.
54. She also considers that DWP ought to have explained to the complainant that the email addresses retrieved would need to be reviewed and the associated information extracted or located manually for each address. It is clear from the correspondence between the complainant and DWP that the complainant is unaware that each email address may not hold all of the requested information. He therefore considers that compiling the requested information is a simple task of extracting from a pre-made list.

55. The Commissioner concludes that, in all of the circumstances of this case, DWP was entitled to rely on section 12 in refusing to comply with the request. She considers that it breached section 16 by not initially providing the complainant with adequate advice or assistance on the matter of whether the request could be refined. However, as a result of the information obtained in the course of her investigation the Commissioner is satisfied that any refined request for information about a reduced number of team email addresses would not reduce the costs of compliance with the request for the reasons outlined in this notice. Therefore the DWP is not required to take any remedial steps with regard to this request.

Right of appeal

56. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

57. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
58. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Sarah O’Cathain
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